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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/612,601
Filing Date: July 01, 2003
Appellant(s): SCHROER ET AL.

Richard LaCava
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6-1-06 appealing from the Office action mailed 10-4-05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,624,424	SAISAKA et al	04-1997
4,904,251	IGAUE et al	02-1990
4,743,246	LAWSON	05-1988

4,738,677

FOREMAN

04-1988

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

As set forth in MPEP 1205.02, when multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Accordingly, the discussion *infra* will be directed primarily to the broadest of claims 1-48, i.e. claim 1.

Other than the terminology explicitly defined in paragraphs 25-29, the claim terminology will be given its ordinary, i.e. dictionary, definition.

Claims 1-48 are rejected under 35 U.S.C. 103(a) as obvious over Saisaka et al '424 in view of Igaue et al '251, Lawson '246 and Foreman '677.

Claim 1: See Figures, especially Figures 1-5, col. 3, lines 40-47, col. 4, lines 23 et seq, note especially line 65, col. 5, lines 3-9, 19-22, 25-28, 59-66, col. 6, lines 1-19, note especially col. 6, lines 1-2, 6-7 and 10-12 as well as the definition of "pervious" in paragraph 26 of the instant specification, i.e. the flaps can have only nonwoven material portions, i.e. flaps are "pervious", col. 6, lines 27-45, col. 7, lines 4 et seq, col. 9, line 39-col. 10, line 65, i.e. the article is 1, the liquid pervious backsheet is 21, the liquid pervious top sheet is 14, the liquid pervious barrier cuffs are 17, the core is 15, the liquid impervious barrier layer is 13, the leg elastic members are 27 and the barrier layer is not present in the portions of the article where the leg elastics are located and does not wrap around the core. The barrier cuffs 17 are bonded to the top sheet, e.g. at least indirectly as seen in Figure 5. Note also the ends of flaps 17 as seen in Figures

3-4 which are turned over top sheet in both the flattened and contracted views of Figures 3-4 whereas the center of the flaps which overlie the topsheet in the flattened view of Figure 3 rise up in contacted view of Figure 4.

As seen in the Figures the Saisaka et al device also includes a back sheet which extends past the lateral edges of the barrier layer 13 and terminates at the side edges of the barrier layer and barrier cuffs which extend past a respective side edge of the barrier layer. Therefore, Saisaka includes or obviously include all the claimed structure except for the cuffs terminating at the side edges of the article. Saisaka shows the cuffs terminating at the point where they extend past the respective side edge of the barrier layer, i.e. the portion of the cuff attached is turned inwardly. Saisaka does not disclose any criticality with regard to such structure, see portions cited supra. Furthermore, note Figures 7, 13, and 8-9 and col. 11, lines 35-37 and col. 11, line 454-col. 12, line 24, especially col. 12, lines 22-24. Furthermore, see Igaue et al, '251 at Figures 14, i.e. portion of cuff attached is turned inwardly, 13, i.e. the portion of the cuff attached is turned outwardly, and 6, i.e. the portion of the cuff attached is turned outwardly and extends to the respective lateral edge of the article, Lawson '246 at Figures 7, i.e. the cuff is formed of the topsheet, and 3, i.e. the cuff is separate from the topsheet with the portion of the cuff attached turned outwardly, and Foreman at Figure 2, i.e. the portion of the cuff attached is turned outwardly and extends to the respective lateral edge of the article, and col. 13, lines 36-64, i.e the cuff is formed of the topsheet, i.e. the prior art teaches interchangeability of a cuff as claimed for that such as taught by Saisaka. Therefore, to make the cuff of Saisaka a cuff which terminates at the side edge of the article as claimed, as best understood, would be obvious in view of the interchangeability as by Igaue et al, Lawson and Foreman.

Claims 3 and 12-15: The backsheet 21 and barrier cuffs 17 may also be hydrophobic and the core may have a rectangular shape. Not only is the barrier layer not present in the portions of the article where the leg elastics are located but the topsheet and the core too, i.e. located laterally inboard of such, narrower than the elastic separation distance.

Claims 2, 4, 6-10, 14, and 16: see Figures, i.e. the ends of the barrier layer are coextensive with those of the article but the ends of the core are not, and discussion of claims 1, 3, and 12-15.

Claim 5: see Figure 5, the bonding point is adjacent 16.

Claims 17-25 and 27-31: see discussion of claims 1-10 and 12-16 supra. Also, with regard to the topsheet, see definition of “hydrophilic” in the instant specification and col. 5, lines 18-21 of Saisaka, i.e. the topsheet is liquid permeable, i.e. accepts fluid, i.e. is “hydrophilic”.

Claim 11: See portions of Saisaka cited supra, i.e. breathable, i.e. moisture permeable, crotch region and Figure 5, i.e. the portion of the crotch region where the leg elastics are but the barrier layer is not located does not include as many layers, including the core, as other portions of the article. Applicant claims such crotch region portion has the property of reduced stiffness. It is noted that the claim does not recite what the portion is “reduced” with respect to, i.e. the remainder of the article? A portion of the remainder? Saisaka et al, while not specifically teaching the breathable leg elastic containing portion has “reduced” stiffness, teaches that such portion does not include as many layers, including the core, as other portions of the article. Therefore, it would be obvious to one of ordinary skill in the art that such crotch region would necessarily and inevitably include such property of “reduced” stiffness compared to other portions of the article including more and/or thicker layers such as the core.

Claims 26, 32 and 36-48: see discussion of claims 1-25 and 27-31 supra.

Claims 33-35: The breathable zones of obvious “reduced” stiffness comprise portions of the absorbent article, e.g. element 21, which do not “encompass”, i.e. defined as “to include or comprise”, any liquid impervious or hydrophilic material, i.e. element 21 can be a water or liquid permeable, hydrophobic material.

(10) Response to Argument

Again, as set forth in MPEP 1205.02, when multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Accordingly, the discussion *infra* will be directed to the broadest of claims 1-48, i.e. claim 1.

A. Appellant’s remarks on pages 8-9 have been considered. However, it is noted that the remarks on page 8, third to last line -page 9, line 6 are narrower than the claim language because breathable zones of reduced stiffness, fit, and less irritation are not required by claim 1. Furthermore, the barrier layer is only required to not be present where the leg elastic members are located which does not necessarily encompass the entire area surrounding the thighs.

B. 1. Appellant’s new arguments on pages 9-11 have been considered but are deemed not persuasive because they are narrower than the rejection which does not set forth that “the reference also teaches the possibility of the cuffs being turned outward, i.e. “show the existence of a limitation”, i.e. the Examiner stated “Finally it is noted that col. 10, lines 27-29 and Figure 5 of '424 cited by Applicant do not explicitly preclude the barrier cuffs being turned outward or teach criticality of them being turned inward.”

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B. 2. Appellant's arguments on pages 11-14, which are substantially identical to those submitted in the 2-3-06 response have been reconsidered but are still deemed not persuasive for the same reasons (i.e. the argument is that "the combination is improper because to modify the cuffs to be turned outward would eradicate stretchability of the side liner portions and thus render the article of Saisaka et al unsatisfactory for its intended use. The arguments do not point out specifically why such outward turning would cause such eradication, e.g. because it is an extra layer? Something else? Such argument is found to be not persuasive in any case because Saisaka teaches that the side portions 2 include not only the side liner portions discussed in col. 1 which are a composite of 19 and 20 as seen in Figure 5 but also a sheet of material 21 which is nonelastic 21 attached thereto. Furthermore it is taught that layer 19 is at least one nonelastic layer. Therefore '424 teaches the portion of the article outside the barrier layer including the specific stretchable composite material can comprise multiple, i.e. two or more, nonelastic layers and yet still be stretchable. Furthermore, the prior art, e.g. Foreman, also teaches that side portions of multiple layers including a layer formed by a turned out barrier cuffs are stretchable. Finally it is noted that col. 10, lines 27-29 and Figure 5 of '424 cited by Applicant do not explicitly preclude the barrier cuffs being turned outward or teach criticality of them being turned inward.")

The rejection of claims 1-48 under 35 USC 103(a) is deemed proper and maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

K. M. Reichle

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[Signature]

John Calvert